PRIYAKUMARY MUTHUCUMARU & ANOR A

v.

GUNASINGAM RAMASINGAM

COURT OF APPEAL, PUTRAJAYA B
GOPAL SRI RAM JCA
ZULKEFLI MAKINUDDIN JCA
ABDULL HAMID EMBONG JCA
[CIVIL APPEAL NO: W-02-56-2005]
14 SEPTEMBER 2006 C

SUCCESSION: *Letters of administration - Revocation of grant - Application by respondent to set aside order of court granting letters of administration of deceased's estate to appellants - Whether respondent as an undischarged bankrupt had locus standi to pursue action - Whether respondent incompetent to maintain action without previous sanction of Official Assignee - Whether presence of Official Assignee's representative in proceedings amounted to implied consent - Bankruptcy Act 1967, s. 38(1)(a)* D

BANKRUPTCY: *Capacity of bankrupt - Action, legal capacity to pursue and maintain - Sanction of Official Assignee - Whether must be obtained prior to filing of action - Whether presence of Official Assignee's representative in proceedings amounted to implied consent - Bankruptcy Act 1967, s. 38(1)(a)* E F

SUCCESSION: *Letters of administration - Revocation of grant - Whether procedure adopted by respondent in filing action by way of summons-in-chambers to set aside order of court granting letters of administration of deceased's estate to appellants incorrect - Whether proceedings in respect of respondent's application a nullity - Rules of the High Court 1980, O. 71, O. 72 rr. 1(2), 2(1), 7* G

CIVIL PROCEDURE: *Administration of estates - Letters of administration - Revocation of grant - Application by respondent to set aside order of court granting letters of administration of deceased's estate to appellants - Whether respondent as an undischarged bankrupt had locus standi to pursue action - Whether procedure adopted by respondent in filing action incorrect - Rules of the High Court 1980, O. 71, O. 72 rr. 1(2), 2(1), 7 - Bankruptcy Act 1967, s. 38(1)(a)* H

This was an appeal by the appellants against the decision of the High Court allowing the respondent's application by way of summons-in-chambers ('application') to set aside an order of the I

A High Court granting the letters of administration of the estate of one Letsumanasingam Ramasingam ('deceased') to the appellants. After the deceased's death, the appellants had filed for letters of administration of his estate under O. 71 of the Rules of the High Court 1980 ('RHC'), which was granted by the High Court. The B respondent then lodged a caveat in the High Court against the petition filed by the appellants and thereafter a warning was issued. The respondent subsequently made the application and entered an appearance; the learned High Court judge found in his favour. The appellants' main ground of appeal was whether the C respondent had the *locus standi* to pursue the action since he was an undischarged bankrupt. The appellants had advanced the same ground in opposing the respondent's application before the High Court but the learned High Court judge dismissed it and ruled that the respondent had the *locus standi* to maintain the action. D The learned judge went on to state that s. 38(1) of the Bankruptcy Act 1967 ('Act') was not applicable, and that the presence of an officer from the office of the Official Assignee ('OS') during the hearing of the respondent's application signified an implied consent on the part of the OS in allowing the E respondent to pursue the action.

Held (allowing the appeal)
Per Gopal Sri Ram JCA:

F **(1)** The High Court fell into error in construing the presence of the OS's representative as amounting to consent within s. 38(1)(a) of the Act. On that ground alone, this appeal must succeed. (para 1)

Per Zulkefli Makinudin JCA (concurring):

G

(1) The sanction that is required under s. 38(1)(a) of the Act is a written sanction from the OS. The respondent must first show a formal application in writing made by him as a bankrupt to the OS for the issuance of the OS's written consent. In the H present instance, he failed to do so. Section 38(1)(a) of the Act is clear that a bankrupt shall be incompetent to maintain an action without the previous sanction of the OS, the exception being only in regard to an action for damages in respect of an injury to his person, which was not the case I here. Therefore, the learned High Court judge had erred in law when he took the view that s. 38(1)(a) of the Act did not apply to the facts of this case. The learned High Court judge had also erred when he held that the presence of the officer

from the office of the OS in the proceedings before him showed "implied consent" for the respondent to maintain the action and to continue with the case. On this ground alone, the appellants would succeed in this appeal. (para 9)

(2) Even assuming that the learned High Court judge was right in treating that the respondent as a bankrupt was competent in maintaining the action against the appellants, the procedure adopted by the respondent in filing the action by way of summons-in-chambers to set aside the order of the court granting the letters of administration of the estate of the deceased to the appellants was totally incorrect. It amounted to an irregularity which could not be cured and, thus, the said proceedings in respect of the respondent's application was a nullity. (para 10)

(3) The present case involved the respondent's intended application to revoke the grant of the letters of administration in respect of the estate of the deceased which was granted to the appellants on 1 August 2003. By virtue of the definition of the words "probate action" under O. 72 r. 1(2) of the RHC, that proceeding was a probate action. It was a contentious probate proceeding as defined thereunder. Hence, for the purpose of the action contemplated by the respondent against the appellants in this case, the applicable rules were O. 72 and not O. 71 of the RHC. A probate action under O. 72 r. 2(1) of the RHC must be begun by writ and the writ must be issued out of the Registry. In the present case, the respondent was found to have lodged a caveat in the High Court on 7 October 2003, well after the appellants had obtained the letters of administration of the deceased's estate on 1 August 2003. The procedure adopted by the respondent in this instance by filing the caveat to challenge the granting of the letters of administration was wrong in law. (para 13)

(4) Unlike O. 71 of the RHC, there is nothing under O. 72 of the RHC that mentions about caveats and the requirement that a caveat must first be entered before a citation can be issued. Therefore, for a citation under O. 72, particularly r. 7 thereof, the prior entry of a caveat as applicable under O. 71 of the RHC for non-contentious probate proceedings is not required. It is not a pre-condition to the issue of a citation under O. 72 r. 7 of the RHC. It is only logical that since the object of a caveat is to prevent the issue of a grant of

representation without notice to the person who has entered it, it is applicable only in a fresh application for the grant of the representation, but not after the grant. The caveat served no purpose at all in the present case where letters of administration had already been granted to the appellants on 1 August 2003 and the respondent's intended application was clearly to revoke the said grant. (para 15)

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan perayu-perayu terhadap keputusan Mahkamah Tinggi kerana membenarkan permohonan saman dalam kamar responden ('permohonan') untuk mengenepikan perintah Mahkamah Tinggi yang memberi suratkuasa mentadbir pusaka seorang Letsumanasingam Ramasingam ('simati') kepada perayu-perayu. Selepas kematian simati, perayu-perayu telah memfail permohonan untuk suratkuasa mentadbir pusaka simati di bawah A. 71 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'), di mana permohonan dibenarkan oleh Mahkamah Tinggi. Berikutnya, responden memasukkan kaveat di Mahkamah Tinggi terhadap petisyen perayu-perayu dan satu amaran telah dikeluarkan. Responden kemudian memfailkan permohonan dan memasukan kehadiran; permohonan responden dibenarkan oleh yang arif hakim Mahkamah Tinggi. Alasan utama rayuan perayu-perayu adalah sama ada responden mempunyai *locus standi* untuk meneruskan tindakannya, memandangkan ia seorang bankrap yang masih belum dilepas. Perayu-perayu mengemukakan alasan yang sama sewaktu menentang permohonan responden di Mahkamah Tinggi, tetapi ditolak oleh yang arif hakim atas alasan responden mempunyai *locus standi* untuk meneruskan tindakannya. Yang arif hakim juga menyatakan bahawa s. 38(1) Akta Kebankrapan 1967 ('Akta') tidak terpakai, dan bahawa kehadiran pegawai dari pejabat Pegawai Penerima ('PP') semasa permohonan responden didengar menunjukkan PP telah memberikan persetujuan tersirat bagi membolehkan responden meneruskan tindakannya.

Diputuskan (membenarkan rayuan)
Oleh Gopal Sri Ram HMR:

(1) Mahkamah Tinggi tersilap apabila mentafsir kehadiran wakil PP sebagai menunjukkan persetujuan dalam ertikata s. 38(1)(a) Akta. Atas alasan ini sahaja, rayuan sudah boleh berjaya.

Oleh Zulkefli Makinudin HMR (menyetujui):

(1) Sanksi yang diperlukan di bawah s. 38(1)(a) Akta adalah sanksi bertulis dari PP. Responden hendaklah terlebih dahulu membuktikan bahawa terdapat permohonan rasmi olehnya sebagai seorang bankrap kepada PP bagi mendapatkan persetujuan bertulis tersebut. Responden, bagaimanapun, gagal berbuat demikian. Seksyen 38(1)(a) Akta adalah jelas, iaitu seorang bankrap tidak berkompeten untuk bertindak tanpa sanksi terdahulu PP, kecuali bagi tindakan-tindakan gantirugi berkaitan kecederaan pada dirinya, yang mana itu bukanlah kesnya di sini. Oleh yang demikian, yang arif hakim Mahkamah Tinggi tersilap di sisi undang-undang apabila menyatakan bahawa kehadiran pegawai dari pejabat PP di prosiding di hadapannya menunjukkan "persetujuan tersirat" untuk membenarkan responden mendakwa dan meneruskan tindakannya. Atas alasan ini sahaja, perayu-perayu harus berjaya dalam rayuan mereka.

(2) Jikapun diandaikan bahawa yang arif hakim Mahkamah Tinggi betul apabila menganggap responden sebagai berkompeten untuk mengambil tindakan terhadap perayu-perayu walaupun ia seorang bankrap, prosedur yang digunakan responden, iaitu dengan cara memfailkan tindakan melalui saman dalam kamar bagi mengenepikan perintah Mahkamah Tinggi yang memberikan suratkuasa mentadbir pusaka simati kepada perayu-perayu, adalah salah sama sekali. Ia adalah satu ketidak-teraturan yang tidak boleh diubati, sekaligus menjadikan prosiding berkaitan permohonan responden tak sah.

(3) Kes semasa melibatkan usaha responden untuk membatalkan geran suratkuasa mentadbir pusaka simati yang diberikan kepada perayu-perayu pada 1 Ogos 2003. Mengambilkira definasi perkataan "tindakan probet" di bawah A. 72 k. 1(2) KMT, prosiding tersebut adalah suatu tindakan probet. Ia adalah prosiding probet dipertikai sepertimana yang ditakrifkan di situ. Oleh itu, bagi maksud tindakan yang dihajatkan oleh responden terhadap perayu-perayu di sini, kaedah yang terpakai adalah A. 72 dan bukannya A. 71 KMT. Satu tindakan probet di bawah A. 72 k. 2(1) KMT hendaklah dimulai dengan writ di mana writ dikeluarkan oleh Pejabat Pendaftaran. Dalam kes semasa, responden telah memasukkan kaveat di Mahkamah Tinggi pada 7 Oktober 2003, iaitu lama selepas perayu-perayu mendapat suratkuasa mentadbir pusaka

A simati pada 1 Ogos 2003. Prosedur yang digunakan oleh responden di sini, iaitu dengan memfail kaveat untuk mencabar pemberian suratkuasa mentadbir, adalah salah di sisi undang-undang.

B **(4)** Tidak seperti A. 71 KMT, tiada suatupun di bawah A. 72 KMT yang menyebut tentang kaveat atau keperluan bahawa kaveat harus terlebih dahulu dimasukkan sebelum sitasi boleh dikeluarkan. Oleh yang demikian, bagi sitasi di bawah A. 72, terutama di bawah kaedah 7nya, kemasukan terdahulu kaveat
C seperti yang terpakai di bawah A. 71 KMT bagi prosiding probet tak dipertikai adalah tidak perlu. Ia bukan syarat duluan bagi pengeluaran sitasi di bawah A. 72 k. 7 KMT. Secara logiknya, oleh kerana objek sesuatu kaveat adalah bagi menghalang pengeluaran geran representasi tanpa notis kepada
D orang yang memasukkan kaveat, maka ia hanya terpakai kepada permohonan baru untuk geran representasi, dan tidak apabila geran telah diberikan. Kaveat dalam kes semasa adalah tidak berguna dan sia-sia, disebabkan suratkuasa mentadbir telah dikeluarkan kepada perayu-perayu pada 1 Ogos 2003,
E sementara tujuan permohonan responden pula hanyalah bagi membatalkan geran tersebut.

Case(s) referred to:
M/s Laksamana Realty Sdn Bhd v. Goh Eng Hwa [2004] 1 CLJ 274 ***(refd)***

F **Legislation referred to:**
Bankruptcy Act 1967, s. 38(1)(a)
Distribution Act 1957, s. 6(e)
Law Reform (Marriage and Divorce) Act 1976, s. 31(1A)
Registration of Birth and Death Act 1957, s. 33(1)
G Rules of the High Court 1980, O. 1 r. 4(1), O. 71 rr. 37(1), (2), (3), 41(3), O. 72 rr. 1(2), 2(1), 7, 8

For the appellants - Rasamani Kandiah; M/s Mohd Latip & Assoc
For the respondent - Gunasingam Ramasingam (respondent in person)
For the official assignee - Jamhirah Ali SFC

H *[Appeal from High Court, Kuala Lumpur; Petition No: S5-31-415-03]*

Reported by Suresh Nathan

I

JUDGMENT

Gopal Sri Ram JCA:

[1] I have the advantage of reading the judgment of my learned brother Zulkelfli bin Ahmad Makinudin JCA in draft and am entirely in agreement with it, in particular, the views he has expressed in s. 38(1)(a) of the Bankruptcy Act 1967. The High Court, in my respectful view, fell into error in construing the presence of the official assignee's representative as amounting to consent within the aforesaid section. On that ground alone this appeal must succeed.

Zulkefli Makinudin JCA:

Introduction

[2] The respondent ("the caveator in the court below") applied by way of summons-in-chambers dated 28 October 2003 ("the application") to set aside an order of the High Court dated 1 August 2003 granting the Letters of Administration of the estate of the deceased to the appellants ("the petitioners in the court below"). The respondent's application was allowed with costs. Against this order the appellants filed the appeal herein.

Facts Of The Case

[3] The relevant facts of the case are as follows:

(1) The deceased was one Letsumanasingam s/o Ramasingam. The respondent is his brother. The first appellant, Priyakumary Muthucumaru is the third and current wife of the deceased. The second appellant is the second wife of the deceased and claiming against the estate of the deceased in her capacity as the mother and guardian of her son with the deceased, one Pradeeban.

(2) The deceased passed away on 17 February 2003. The appellants then filed for Letters of Administration of the estate of the deceased under O. 71 of the Rules of the High Court 1980 ("RHC 1980") on 22 May 2003. The High Court granted the order for Letters of Administration of the estate of the deceased to the petitioners on 1 August 2003.

(3) The respondent had lodged a caveat in the High Court on 7 October 2003 against the petition filed by the appellants and thereafter a warning was issued. He subsequently made the application on 28 October 2003. The respondent entered appearance on 30 October 2003.

A **The Appellants' Contention**

[4] In the court below in opposing the respondent's application it was contended on behalf of the appellants *inter alia* as follows:

B (1) The beneficiaries of the estate of the deceased pursuant to s. 6(e) of the Distribution Act 1957 are only the first appellant, the widow of the deceased and his son Pradeeban who is a minor and represented by the second appellant.

C (2) The respondent's allegation that the first appellant is not a legal spouse of the deceased, being a Sri Lankan is baseless. This is because the marriage of the deceased and the first appellant which took place in Sri Lanka was registered in Malaysia on 6 January 1993 pursuant to s. 31(1A) of the Law Reform (Marriage and Divorce) Act 1976.

D (3) There is no obligation on part of the appellants to disclose the respondent's interest in the deceased's estate in their application for Letters of Administration (if any) because he is not a beneficiary thereunder.

E (4) Pradeeban is the son of the deceased. The respondent himself acknowledged this fact in his invitation to the son to perform religious rites to the deceased and also when he wrote to Amanah Raya Berhad informing that the deceased left behind a son from the marriage with the second appellant.

F (5) The respondent is an undischarged bankrupt. Therefore he has no locus to maintain this action without sanction from the official assignee.

G **The Respondent's Contention**

[5] The respondent in support of the application in the court below contended *inter alia* as follows:

H (1) In the decree nisi absolute of the divorce between the deceased and the second appellant, the second appellant undertook to meet the child's financial needs and make no claims at any stage from the deceased. She also obtained a final and absolute separation court order that she shall have the guardianship, custody and care of the child with no access I between the child and the deceased. This means that the child cannot make any claim against the deceased's estate.

(2) The child, Pradeeban is not a natural son of the deceased. This is because the deceased cannot have children. The respondent's request that the child should take a DNA test to prove that he is the natural child of the deceased was rejected by the appellants.

(3) The first appellant is permanently separated from the deceased. The deceased had in fact lodged a police report against the first appellant for criminal offences. The first appellant had never visited the deceased when he was in the hospital and when he passed away. The respondent also lodged a police report against the first appellant alleging her conspiring with her friends to kill the deceased.

Findings Of The High Court

[6] The learned judge of the High Court in his grounds of judgment in allowing the respondent's application amongst others had made the following findings:

(1) An entry in the Certificate of Birth pursuant to s. 33(1) of the Registration of Birth and Death Act 1957 which shows the deceased is the father of Pradeeban does not conclusively prove that Pradeeban is indeed the son of the deceased. This can only be proved by calling all the witnesses in a full trial.

(2) The appellants had never visited the deceased at the hospital when he was sick nor they attended his burial. They were not aware of the financial status of the deceased but only wanted leave from the court to get their hands on the deceased's wealth.

(3) Before the filing of the petition herein under O. 71 of the RHC 1980, the appellants were fully aware that the respondent himself was also keen to file the same application. Therefore the appellants knew beforehand that their petition will be challenged. Thus they should have filed a probate action under O. 72 of the RHC 1980 instead of filing a summary application under O. 71of the RHC 1980.

(4) The respondent has a locus to maintain the action. Section 38(1)(a) of the Bankruptcy Act 1967 ("the Act") is not applicable here. Further, the presence of an officer from the office of the official assignee during the hearing signifies an implied consent on the part of official assignee in allowing the respondent to pursue the action herein.

(5) The court is satisfied that the respondent had managed to raise triable issue in respect of facts and law. The petition should not be heard and disposed off summarily. On the above grounds the respondent's application is allowed with costs. Pursuant to O. 72 of the RHC 1980 the court grants leave to the petitioners to file a probate action by writ against the respondent.

Decision Of The Court Of Appeal

[7] It is noted at the outset the appellants' main ground of appeal is whether the respondent has the *locus standi* to pursue the action on the basis that the respondent is an undischarged bankrupt. This same ground was advanced by the appellants in opposing the respondent's application before the High Court but the learned High Court Judge dismissed it and ruled that the respondent had the locus to maintain the action. The learned judge went on to state that s. 38(1) of the Act is not applicable here and that the presence of an officer from the office of the official assignee during the hearing of the respondent's application signifies an implied consent on the part of the official assignee in allowing the respondent to pursue the action.

[8] Puan Jamhirah Ali, learned senior federal counsel who appeared for the official assignee (now known as Director General of Insolvency by way of A1197/03) at the hearing of this appeal had confirmed the fact that before the filing of the application, the respondent who is a bankrupt had never applied for a sanction or consent from the official assignee. Section 38(1)(a) of the Act reads as follows:

> 38(1) Where a bankrupt has not obtained his discharge:
>
> (a) the bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Official Assignee.

[9] We are of the view the sanction that is required under s. 38(1)(a) of the Act is a written sanction from the official assignee. There must be first shown by the respondent in this case a formal application in writing made by him as a bankrupt to the official assignee for the issuance of the written sanction of the official assignee. The respondent has failed to do so here. The provision of s. 38(1)(a) of the Act reproduced above is clear in that a bankrupt shall be incompetent to maintain an action

without the previous sanction of the official assignee. The exception is only as regards an action for damages in respect of an injury to his person which is not the case here (see the case of *M/s Laksamana Realty Sdn. Bhd. v. Goh Eng Hwa* [2004] 1 CLJ 274). It is therefore our judgment that the learned judge of the High Court had erred in law when he took the view that s. 38(1)(a) of the Act does not apply to the facts of the case. We are also of the view that the learned judge had erred when he held that the presence of the officer from the office of the official assignee in court in the proceedings before him on 7 July 2004 showed "implied consent" for the respondent to maintain the action and to continue with the case. On this ground alone the appellants would succeed and we would allow this appeal.

[10] There is one other important point which we would like to deal with here. Even assuming the learned judge of the High Court is right in treating that the respondent as a bankrupt is competent to maintain the action against the appellants, we are of the considered view that the procedure adopted by the respondent in filing the action by way of summons-in-chambers to set aside the order of the court granting the Letters of Administration of the estate of the deceased to the appellants is totally incorrect. It amounts to an irregularity which cannot be cured and thus the said proceedings in respect of the respondent's application was a nullity.

[11] The relevant rules relating to probate proceedings are found in the RHC 1980, particularly O. 71 and O. 72. Order 71 of the RHC 1980 provides for procedures relating to non-contentious probate proceeding, while O. 72 of the RHC 1980 provides for procedures relating to contentious probate proceeding. For the purpose of the RHC 1980 "probate proceedings" include a proceedings in probate (where will is involved) as well as proceedings for letters of administration (where no will is involved). Order 1 r. 4(1) of the RHC 1980 provides "probate action" has the meaning assigned to it by O. 72. Order 72 r. 1(2) provides:

> (2) In these rules 'probate action' means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious.

[12] In the present case the matters raised by the respondent in our view relate to contentious probate proceedings. Therefore the provision of O. 72 of the RHC 1980 shall apply to the respondent's case. Both O. 71 and O. 72 of the RHC 1980 provide for the mode of issuance of citations, which is a preliminary step to be taken by the parties concerned in the probate proceedings. For citations in non-contentious probate matters under O. 71 of the RHC 1980 the citor must enter a caveat before the issue of the citations. Order 71 r. 41(3) of the RHC 1980 clearly provides for this requirement. Thus in that circumstances, a citation cannot be issued unless and until the citor has entered a caveat. However, it must be stressed that this requirement under O. 71 r. 41(3) of the RHC 1980 is only for non-contentious probate proceedings under O. 71. The provision relating to caveat is to be found under O. 71 r. 37 of the RHC 1980. Order 71 r. 37(1) and (3) provides that "any person who wishes to ensure that no grant is made without notice to himself may enter a caveat" by filing the Caveat Form 173 in the Registry. It is a notice in writing (Form 173) lodged at the Registry of the High Court. The object of a caveat is to prevent the issue of grant of representation without notice to the person by whom or on whose behalf the caveat is entered.

[13] For the present case, it must be noted that it involves the respondent's intended application to revoke the grant of the letter of administration in respect of the estate of the deceased which was granted to the appellants on 1 August 2003. By virtue of the definition of the words "probate action" under O. 72 r. 1(2) of the RHC 1980 that proceeding is a probate action. It is a contentious probate proceeding as defined thereunder. Therefore, for the purpose of the action contemplated by the respondent against the appellants in this case the applicable rules are O. 72, not O. 71 of the RHC 1980. A probate action under O. 72 r. 2(1) of the RHC 1980 must be begun by writ and the writ must be issued out of the registry. In the present case the respondent is found to have lodged a caveat in the High Court on 7 October 2003, well after the appellants had obtained the Letters of Administration of the estate of the deceased on 1 August 2003. In our view the procedure adopted by the respondent in this case by filing the caveat to challenge the granting of the Letters of Administration of the estate of the deceased to the appellants is wrong in law.

[14] The relevant provisions relating to contentious probate proceedings are found in O. 72 rr. 7 and 8 of the RHC 1980. For easy reference the provisions of O. 72 rr. 7 and 8 of the RHC 1980 are reproduced in full as follows:

7 Citation to bring in grant (O. 72 r. 7)

In an action for the revocation of the grant of probate of the will, or letters of administration of the estate of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

8 Citations (O. 72 r. 8)

(1) A citation under rule 5 or 7 must be issued out of the Registry and must be settled by the Court before it is issued.

(2) Before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:

Provided that the Court may in special circumstances allow the affidavit to be sworn by that person's solicitor.

(3) Issue of a citation takes place upon its being sealed by an officer of the Registry.

(4) Without prejudice to Order 62 rule 5, a citation under rule 5 or 7 must be served personally on the person cited.

(5) Service out of the jurisdiction of a citation under rule 5 or 7 is permissible but, in the case of a citation under rule 7, only with the leave of the Court.

(6) Order 11 rule 4, shall apply in relation to an application for the grant of leave under paragraph (5) as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(7) An order granting leave to serve a citation under rule 7 out of the jurisdiction must limit a time within which the person to be served with the citation must comply with it.

(8) Order 11 rules 5, 6 and 8 shall apply in relation to a citation under rule 7 as they apply in relation to notice of a writ.

[15] Unlike O. 71 of the RHC 1980, there is nothing under O. 72 of the RHC 1980 which mentions about caveat and the requirement that a caveat must first be entered before a citation can be issued. Therefore we are of the view that for a citation under O. 72, particularly r. 7 thereof, the prior entry of a caveat as applicable under O. 71 of the RHC 1980 for non-contentious probate proceedings is not required. It is not a pre-condition to the issue of a citation under O. 72 r. 7 of the RHC 1980. It is only logical that since the object of a caveat is to prevent the issue of a grant of representation without notice to the person who has entered it, it is applicable only in fresh application for the grant of the representation, but not after the grant. The caveat served no purpose at all in the present case where a letter of administration has already been granted to the appellants on 1 August 2003 and the respondent's intended application is clearly to revoke the said grant. On this point in *MLJ Handbook Series "Administration of Estates Handbook"* – Advisory Editor Kanesh Sundrum (at page 1[202]) it is stated that:

> Once representation has been granted to any petitioner and extracted, a caveat cannot be entered to stop any proceeding relating to the estate. In such a situation, the proceedings can only be stopped by revoking the grant of representation.

Conclusion

[16] For the above stated reasons, we would allow the appellants' appeal. The order of the High Court dated 8 December 2004 in allowing the respondent's application is hereby set aside. In view of the fact that the respondent is an undischarged bankrupt we make no order as to costs in respect of the proceedings in this appeal. The deposit paid by the appellants for this appeal is to be refunded to the appellants.

[17] My learned brother, Abdull Hamid bin Embong JCA has seen this judgment in draft and has expressed his agreement with it.